IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
WRIT PETITION NO.3575 OF 2006

K.D.Desai, .. Petitioner
Vs
1. P.S.Tamboli and ors. .. Respondents.

Mr N.R.Patil, for the petitioner.

CORAM : D.B.BHOSALE,J.
DATE : 12.09.2006

PC:

1. Heard the learned counsel for the petitioner.

2. The petitioner has impugned the order dated 21.12.2005 passed by the trial Court on the petitioner's application at Exhibit 22 seeking framing of an issue as to the maintainability of the suit and trying it as a preliminary issue, has been rejected. I perused the order. The trial Court has rejected the prayer of the petitioner holding that the question raised by the defendant is a mixed question of law and fact. The application filed by the petitioner was based on the fact that the suit filed by him earlier was decreed and in view thereof the instant suit is not maintainable. It is an admitted fact that the respondent-plaintiff was not a party in the said suit. This fact was taken into consideration while rejecting the prayer of the petitioner. I see no reason to interfere with the order impugned under Article 227 of the Constitution of India. Hence, the writ petition is dismissed.

(D.B.BHOSALE,J.)